IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

P.R. Bohra
vs
State of Rajasthan & Anr.

S.B. CRIMINAL MISC. PETITION NO.1408/2006 AGAINST THE ORDER DATED 17.10.2006 PASSED BY SHRI RAJKUMAR BHAGAT, RHJS, ADDL. DISTRICT & SESSIONS JUDGE NO.2, JODHPUR IN CRIMINAL APPEAL NO.100/2004

DATE OF ORDER : 22nd January, 2007

PRESENT
HON'BLE JUSTICE SHRI G.S. SARRAF

Shri Shreedhar Purohit, for the petitioner.
Shri S.N. Tiwari, Public Prosecutor.
Shri S.P. Sharma, for the respondent no.2.

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BY THE COURT:

This is a petition under Section 482 Cr.P.C. against the order dated 17.10.2006 passed by Addl. District & Sessions Judge NO.1, Jodhpur whereby the application of the petitioner moved under Section 265B Cr.P.C. has been dismissed.

The facts in brief according to the petition are that the petitioner was convicted by trial court for the offence under

Section 138 of the Negotiable Instrument Act and was sentenced to one year simple imprisonment and a fine of Rs.1,50,000/-. After the conviction of the petitioner an amendment in Cr.P.C. was introduced by which Chapter XXIA was added with respect to Plea Bargaining. While an appeal against the judgment of conviction was pending the petitioner, by invoking Section 265B Cr.P.C., moved an application alongwith his affidavit before the learned appellate court for plea bargaining. The learned appellate court, i.e., Addl. District & Sessions Judge No.1, Jodhpur dismissed the application of the petitioner holding that the application could be moved only in the trial court and not in the appellate court.

Heard Shri Shreedhar Purohit, learned counsel for the petitioner, Shri S.N. Tiwari, learned Public Prosecutor and Shri S.P. Sharma, learned counsel for the respondent no.2.

Section 265B Cr.P.C. provides that a person accused of an offence may file application for plea bargaining in the Court in which such offence is pending for trial. Appeal is a statutory right. The verdict of the trial court does not attain finality during pendency of the appeal. Trial continues so long the appeal remains pending. Since appeal is extension of trial, therefore, an application for plea bargaining can be moved in the appellate court also.

In view of the above, it becomes clear that the order of

Addl. District & Sessions Judge NO.1, Jodhpur dismissing the application of the petitioner moved under Section 265B Cr.P.C. is not in accordance with law and deserves to be set aside.

Consequently, this misc. petition is allowed, the order dated 17.10.2006 of Addl. District & Sessions Judge NO.1, Jodhpur is set aside and the learned court is directed to dispose of the application of the petitioner moved under Section 265B Cr.P.C. in accordance with the provisions of Chapter XXIA Cr.P.C.

(G.S. SARRAF), J.

cpgoyal/-